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## THE FEDERAL INTERPLEADER ACT OF 1936: II.

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### II

THE Interpleader Act of 1936<sup>1</sup> was drawn with the hope that no further revision of federal interpleader legislation would be necessary for a long time to come. However, the statute does not attempt to settle all possible questions. In the course of reviewing the various clauses of the act, in the first instalment of this article, I indicated several matters that will need judicial interpretation, such as the effect of partial co-citizenship. It may be interesting to discuss four interpleader problems that have presented considerable difficulty, and see what bearing, if any, the new statute will have upon their solution.

#### INSURANCE POLICIES AND OTHER INSTRUMENTS CREATING A LIMITED LIABILITY TO JUDGMENT CREDITORS

Legislation frequently requires that one engaging in an enterprise capable of causing serious injuries or losses to others, especially to persons of small means, must supplement his own financial responsibility by furnishing an additional source of reimbursement available to potential sufferers who reduce their claims to judgment. Thus an automobile owner may have to file a liability insurance policy in which the company agrees to satisfy judgments against the insured up to a certain amount. A broker may need to obtain a surety bond containing a similar obligation running to the broker's clients, as a safeguard against his financial collapse. A foreign insurance company seeking to do business in a state may be compelled to protect its policy holders by furnishing a like bond issued by another corporation. The liability under all these instruments is expressly limited to a stated sum of money. If the apprehended disaster occurs, the claims of the victims may amount in the aggregate to a much larger sum and then a bitter struggle for priority is likely to take place.

This problem of the distribution of a limited fund is analogous to

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1. P. L. No. 422, 74th Cong., 2nd Sess. (1936). For the text of this statute, see (1936) 45 YALE L. J. 963, 968, n. 26.

the administration of an estate of an insolvent decedent or a bankrupt or a corporation in receivership. However, in such cases the courts need only follow well settled methods of distribution, which they have worked out during many years with the help of legislatures. The property and the creditors are quickly brought into one court with wide equity powers, and the estate is put into the custody of an officer of the court—an executor, trustee in bankruptcy or receiver—who is under a duty to delay distribution until all the claims have been proved. On the other hand, when judges are confronted with the new types of limited funds, created by statutes in response to modern business developments, there is no familiar technique at hand. Assume that the statute says nothing about pro rata distribution<sup>2</sup> or unified administration of the fund in a single court, but merely authorizes the claimants to enforce their rights against the insurance (or surety) company by separate actions at law and by executions. In so far as the insurance fund can be said to have a custodian, it is in charge of the insurance (or surety) company, a private person under no fiduciary responsibility to the court or anybody else. Consequently, unless judges exert themselves to devise their own methods for enforcing equal distribution, the company may pay over the whole fund to whichever judgment creditors it happens to favor, or the fund may be exhausted by the first creditors who get judgments.

At least two methods for unified judicial control of the insurance fund suggest themselves. The first method is analogous to a creditor's bill filed on behalf of all creditors. For example, the victim of an automobile accident who has not yet obtained judgment may sue to enjoin the insurance company from paying the total amount of the insurance to some judgment claimants, and may also ask for an order that the fund be equally distributed among all the victims who get judgments before a fixed date. However, two courts have dismissed such bills on the ground that before judgment a victim has not acquired any interest in the fund that will support a suit in equity.<sup>3</sup> Although this result is regrettable, it is in conformity with cases refusing to allow a simple contract creditor of a corporation to obtain a receivership.<sup>4</sup>

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2. The New York Vehicle and Traffic Law (1929) § 17 requires the pro rata distribution of the proceeds of a surety bond filed by a person operating a motor vehicle for hire. No machinery for enforcing such distribution is set up by the statute. See Bleimeyer v. Public Service Mutual Casualty Ins. Corp., 250 N. Y. 264, 165 N. E. 286 (1929).

3. *Bruyette v. Sandini*, 197 N. E. 29 (Mass. 1935), adversely criticized in (1936) 49 HARV. L. REV. 658; *Turk v. Goldberg*, 91 N. J. Eq. 283, 109 Atl. 732 (Ch. 1920). See also *Bartlett v. Travelers Insurance Co.*, 117 Conn. 147, 167 Atl. 180 (1933), noted in (1933) 28 ILL. L. REV. 576 and (1933) 43 YALE L. J. 136. *Contra*: *National Surety Co. v. Graves*, 211 Ala. 533, 101 So. 190 (1924).

4. *Pusey & Jones Co. v. Hanssen*, 261 U. S. 491 (1923); *Harkin v. Brundage*, 276 U. S. 36 (1928); Comment (1930) 43 HARV. L. REV. 1298.

Secondly, an interpleader suit may be filed by the insurance company (or surety company) against all the claimants, including those who have not yet obtained judgment. This method is better supported by precedents than the first procedure, because interpleader has been frequently allowed to other kinds of stakeholders who are subjected by statute to a limited liability.<sup>5</sup> In the situation under discussion, at least two state courts have let the insurance company or surety company interplead when all the claimants resided within the state.<sup>6</sup>

The question now arises whether the United States courts will grant interpleader when the various claimants reside in two or more states. Such federal relief was denied in an important case under the 1926 Act, *Klaber v. Maryland Casualty Co.*<sup>7</sup> A casualty company incorporated in Maryland had issued a policy of automobile liability insurance to a trucking firm doing business in Kansas with a \$5000 limit of liability for one person killed or injured, and a \$10,000 limit for all persons killed or injured in a single accident. The policy obligated the company to investigate all claims and defend all suits, paying legal and court expenses regardless of the limits of liability. By the terms of the policy, as a Kansas statute required, the company agreed to pay any judgment recovered against the policy holder for injuries or death within the policy, and also that the holder of such a judgment could sue the company directly to compel such payment. A truck belonging to the assured collided with an interstate bus, killing three persons and injuring many others. Many claims and suits followed on the part of citizens of different states, and the total demands for damages were far in excess of \$10,000. After one victim, Klaber, a resident of Nebraska, had recovered a judgment of \$4,000 against the assured and garnished the casualty company, the company filed a bill of interpleader under the 1926 Act in the United States District Court of Nebraska against this judgment creditor, the plaintiffs in the various suits in which judgment had not yet been obtained, and other persons

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5. *Supervisors of Saratoga County v. Deyoe*, 77 N. Y. 219 (1879); mechanics' lien cases cited note 10 *infra*; Chafee, *Bills of Peace with Multiple Parties* (1932) 45 HARV. L. REV. 1297 at 1311.

6. *Century Indemnity Co. v. Kofsky*, 115 Conn. 193, 161 Atl. 101 (1932) (automobile insurance); *New Amsterdam Co. v. Hyde*, 148 Ore. 229, 241, 34 P. (2d) 930, 35 P. (2d) 980 (1934) (broker's qualifying bond), citing cases from other states. *Contra*: *American Surety Co. v. Brim*, 175 La. 959, 144 So. 727 (1927) (bond qualifying foreign workmen's compensation insurance company); *Stusser v. Mutual Union Ins. Co.*, 127 Wash. 449, 221 Pac. 331 (1923) (bond for public motor vehicle). Interpleader was granted as to the proceeds of a construction bond in *Commonwealth v. City Trust Safe Deposit & Surety Co.*, 224 Pa. 223, 73 Atl. 425 (1909); see Campbell, *The Protection of Laborers and Materialmen under Construction Bonds* (1936) 3 UNIV. CHI. L. REV. 201, 219.

7. 69 F. (2d) 934 (C. C. A. 8th, 1934).

who were making or might make claims against the assured because of the accident. The company paid \$10,000 into court and asked that the defendants be required to interplead with respect to this fund and be enjoined from prosecuting their actions elsewhere. The District Court denied motions to dismiss the bill and granted injunctions. The Circuit Court of Appeals reversed this decree and remanded the case with directions to dismiss the bill. The main reason given in the opinion of Judge Sanborn for denying a strict bill of interpleader was that the company was strongly interested in the controversy because of its duty under the policy to defend pending and future suits. This interest would not cease until the claims of all the defendants had been reduced to judgment or found baseless.<sup>8</sup> Another objection to a strict bill was that the only actual claimant was the single judgment creditor. Since the other claimants could not sue the company until they had obtained judgments against the assured, their claims were considered to be too remote to be adverse claims within the terms of the 1926 Act at the time the company filed its bill. "They were not demanding anything of it (the company) and whether they would ever be in a position to demand anything of it was purely conjectural." Judge Sanborn recognized that the company's interest would not bar a bill in the nature of a bill of interpleader, but thought that such a bill would also be premature. Apparently he considered that a bill in the nature of a bill of interpleader was not authorized by the 1926 Act.

The case does not decide that the company is permanently remediless. Judge Sanborn intimates that interpleader might have been granted after several claims had been reduced to judgment, which exceeded in the aggregate the \$10,000 liability. He says that in that event there would be a real danger to the company whose remedies at law would be as likely to prove inadequate as those of any insurance stakeholder against whom claims are made in excess of its liability. Consequently, the court would probably then have given relief in the nature of interpleader under general federal equity powers, but not under the 1926 Act.

This decision clearly called for a change of law. The result was harsh to the casualty company, which had to deal separately with every judgment, but the real sufferers were the claimants who had not yet obtained judgment. Klaber, by fortuitously getting the first judgment, could collect his claim in full, leaving only \$6,000 for the other victims. Since a second claimant, Erwin, recovered a judgment for \$10,000 soon after the appeal was filed,<sup>9</sup> Erwin could take this

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8. Interpleader was denied in a similar state case because of the stakeholder's interest. *Stusser v. Mutual Union Ins. Co.*, 127 Wash. 449, 221 Pac. 331 (1923), noted in (1924) 33 YALE L. J. 879.

9. The second judgment was held immaterial, as it came after the appeal was docketed. Sanborn, J., said (p. 940): "It is obvious that what has transpired since the appeal can-

\$6,000, and the rest of the victims were not likely to benefit from the insurance at all. A court of equity should be able to prevent this unseemly race for payment by ordering distribution of the insurance fund pro rata among all the claimants who get judgment within a reasonable time fixed by the court.

What is the effect of the Interpleader Act of 1936 if such a situation again arises? Assume that more than one judgment has been obtained, so that the bill cannot be called premature. If these judgments exceed the limited liability under the policy, the new statute enables a district court to give complete relief. Even if the casualty company is still interested because of its duty to fight further claims, such a retention of interest would not bar a bill in the nature of interpleader, and these bills are expressly authorized by the Act of 1936. Under the previous law it was necessary, in Judge Sanborn's opinion, to go outside the 1926 statute in order to get a bill in the nature of a bill of interpleader, and this might have made relief impossible because service of process could not be made on claimants residing outside the district in which the bill was filed. The new statute makes it possible to have nationwide service for bills in the nature of bills of interpleader. The situation in the *Klaber* case presents a promising ground for such a bill, because the great multiplicity of threatened actions at law by judgment creditors against the company furnishes the elements of a bill of peace. The independent equitable ground necessary for bills in the nature of bills of interpleader is thus present. Strong support for this position is found in the cases granting relief against numerous suits by holders of mechanics' liens which in the aggregate exceed the limited liability of the land owner.<sup>10</sup>

Of course, this is not an ordinary interpleader situation. The insurance company cannot pay \$10,000 into court and retire from the case. Besides its duty to pay this money, it has also obligated itself to defend every claim against the assured growing out of the accident. Hence it must stay in for the purpose of either defeating the claims or keeping damages as low as possible. But such a course is entirely proper in a proceeding in the nature of interpleader. The situation resembles a receivership, and the court can act much as it would if the negligent trucking company were insolvent. The assets (insurance money) are brought into the court, which forces each claimant to prove

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not be considered in aid of the bill or the decree. If the facts stated in the bill were not sufficient to give the court jurisdiction, the appellants were entitled to a dismissal." This holding makes the case doubly unfortunate. If the facts at the time of the appellate decision justified relief, it was a useless waste of everybody's time and money to compel the stakeholder to go back and start all over again.

10. *School District v. Weston*, 31 Mich. 85 (1875); *Aleck v. Jackson*, 49 N. J. Eq. 507, 23 Atl. 760 (Ch. 1902). See cases cited note 5 *supra*.

against the fund. The insurance company contests the claims as a receiver would. Furthermore, although the court of equity has jurisdiction, it can recognize the desirability of jury trials of personal injury cases by letting each claimant establish his claim (if he can) in an ordinary tort action. The resulting judgments will be filed in the equity court until the date set for distribution. If the judgments aggregate \$50,000, each victim will get a 20 per cent. dividend out of the insurance money, and will have to collect the balance from the assured.<sup>11</sup>

The new statute says nothing one way or the other about the other point in the *Klaber* case, that interpleader is premature until more than one judgment has been obtained. Still, it is respectfully submitted that Judge Sanborn imposed a needlessly drastic test, and that a bill in the nature of interpleader should lie even before any judgment. It is sufficient for the court to assure itself that the danger of multiplicity of suits is genuinely present. The seriousness of the accident and the obvious good faith of the victims in seeking damages meet this requirement. The victims are "claiming to be entitled to such (insurance) money" within paragraph (a) (i) of the Act of 1936, at least after they file suits against the assured. It is true that the victims technically have no cause of action against the insurance company until judgment, and only against the assured till then; but substantially they are all seeking the insurance money from the start. The company's obligation to defend and its limited duty to pay give it a vital interest in every tort action. It is no interloper in asking a unification of the numerous tort actions brought against the assured. Its request benefits the claimants as well as itself. Instead of a haphazard looting of the fund by the first comers, a bill in the nature of interpleader filed before numerous judgments have ripened assures a fair share of the insurance money to each victim and conforms to the principle, "Equity is equality."

Furthermore, the *Klaber* case puts the casualty company between Scylla and Charybdis. If it interpleads before judgment, the *Klaber* case says it is premature. If it waits and interpleads after judgment, it may find itself barred by laches.<sup>12</sup> It would seem that the sooner the bill in the nature of interpleader is filed, the better, so long as a real need for pro rata distribution of a limited fund is made evident. The occurrence of a disaster giving rise to numerous bona fide claims that in the aggregate far exceed the limited liability should be a sufficient showing of multiplicity of suits to support the bill.

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11. A procedure like that described above was followed in *New Amsterdam Co. v. Hyde*, 148 Ore. 229, 34 P. (2d) 930, 35 P. (2d) 980 (1934).

12. *American Surety Co. v. Brim*, 175 La. 959, 144 So. 727 (1927); Comment (1934) 47 HARV. L. REV. 1174 at 1179, n. 42. But see *New Amsterdam Casualty Co. v. Hyde*, 148 Ore. 229, 34 P. (2d) 930, 35 P. (2d) 980 (1934). As to laches in interpleader, see CHAFEE, CASES ON EQUITABLE REMEDIES (1936) 105.

Thus the provision for bills in the nature of interpleader in the Act of 1936 appears to offer relief to a casualty company after an accident like that in the *Klaber* case, or to a surety company giving a qualifying bond on behalf of a broker who fails with debts to customers much beyond the amount of the bond.

#### ALL CLAIMANTS CITIZENS OF THE SAME STATE

When all the claimants are co-citizens, a bill against them cannot be maintained under the Act of 1936, because paragraph (a) (i) expressly requires that the interpleaded claimants be "citizens of different States." However, a federal bill of interpleader may conceivably lie apart from the interpleader legislation embodied in subsection 26 of section 24 of the Judicial Code as amended by the Act of 1936. It may lie under the general equity powers of the district courts under subsection 1 of the same section of the Judicial Code,<sup>13</sup> if the amount in controversy be over \$3,000. Some cases before 1917 allowed a stakeholder residing in one state to interplead claimants all residing in another state,<sup>14</sup> although the authorities were divided. These cases would be in point if in the situation of the *Klaber* case all the claimants lived in one state and the casualty company was incorporated in another state. Federal interpleader might be desired by the company because of local prejudice or because the state courts imposed strict requisites upon interpleader, rendering that remedy impossible except in a United States court.

The question at once arises whether the Act of 1936 is exclusive, abolishing all possibility of federal interpleader except when the stakeholder complies with the statutory requisites for relief. Such was not the intention of the draftsman, and the language of the statute does not seem to necessitate such a result.

The 1926 Act was not considered by the courts to be exclusive. Thus an oil company incorporated in Delaware was allowed in 1934 to interplead several residents of Oklahoma as to the distribution of \$5,000, part of the purchase price of oil and gas property. Kennamer, J., said:<sup>15</sup>

"Interpleader suits have been maintained in the federal courts of equity from very early times. . . .

"Such an action involves two successive litigations; one between the plaintiff and the defendants as to whether the defendants shall interplead; the other between the different defendants on the conflicting claims. . . .

13. 36 STAT. 1091 (1911), 28 U. S. C. A. § 41 (1) (1926).

14. *Mutual L. Ins. Co. v. Farmers' & Mechanics' Nat. Bank*, 173 Fed. 390 (C. C. S. D. Ohio 1909); *Knickerbocker Trust Co. v. Kalamazoo*, 182 Fed. 865 (C. C. D. Mich. 1910). *Contra*: *Mutual L. Ins. Co. v. Allen*, 134 Mass. 389 (1833). See Chafce, *Interpleader in the United States Courts* (1932) 41 YALE L. J. 1134, at 1142-3.

15. *Turman Oil Co. v. Lathrop*, 8 F. Supp. 870 at 873 (N. D. Okla. 1934), noted in (1935) 48 HARV. L. REV. 854.

"In the instant case, the amount in controversy is \$5,000; the suit is of a civil nature in equity, and plaintiff is a non-resident of the state of Oklahoma, and all of the defendants are residents of the state of Oklahoma, and are amenable to the jurisdiction of this court. No controversy is presented by one defendant against another defendant; the defendants and each of them are asserting their claims against the plaintiff; they are not making a claim that any of the other defendants owe them the commission they claim. Each of the defendants claiming to have acted as broker in the transaction are asserting a claim against the plaintiff for the \$5,000 brokerage commission. . . . A controversy exists between plaintiff and the various defendants, who are claiming the sum of \$5,000 due from plaintiff. As plaintiff has no claim to the fund, and has not incurred an independent liability to any of the claimants, but stands in the position of a disinterested stakeholder, it is entitled to the relief it seeks, and the determining as to which claimant is entitled to the fund is necessary for a final disposal of the case. A federal court of equity will complete the action, between residents of the same state, if jurisdiction has properly been conferred in the principal action. . . .

"In the instant case, the interpleader statute [of 1926] is not involved. . . ."

This case is perhaps distinguishable on the ground that the 1926 Act applied only to insurance, casualty, and surety companies, and consequently an oil company, which did not fall within the scope of the interpleader legislation, was not subject to the statutory requisites. It is certainly arguable that after 1926 an insurance company, casualty company, or surety company, that wanted to interplead could do so only under the interpleader statute and could no longer make use for this purpose of subsection (1) of section 24 of the Judicial Code, conferring general diversity jurisdiction. This argument would be applicable a fortiori to the Act of 1936, which allows every kind of person or corporation to have interpleader under statutory limitations; and it can therefore be urged that hereafter all federal interpleader must be brought in accordance with these limitations. However, there are several cases opposed to this argument. An Indiana casualty company was granted non-statutory interpleader in 1930 against two Louisiana claimants,<sup>16</sup> who could not have been interpleaded under the 1926 Act. In the *Klaber* case,<sup>7</sup> which also involved a casualty company, Judge Sanborn considered at length the possibility of granting relief outside the provisions of the 1926 Act, and said:<sup>17</sup>

"The act does not deprive the federal courts of any jurisdiction which they previously had over bills of interpleader, nor does it change the equitable principles governing such bills. [Citations.] It merely provides that in certain cases and for the benefit of a class of disinterested

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16. *National Sash & Door Co., Inc. v. Continental Casualty Co.*, 37 F. (2d) 342 (C. C. A. 5th, 1930).

17. 69 F. (2d) 934 (C. C. A. 8th, 1934) at 939-940.



stakeholders the courts may exercise powers that could not otherwise be exercised.

"It does not necessarily follow, however, that because the bill was not within the statute . . . , the appellants were entitled to a dismissal of the suit. The jurisdictional amount is involved and there is diversity of citizenship. Therefore, if the bill, although not one of statutory interpleader, may be sustained as a bill in the nature of a bill of interpleader, it should not be dismissed."

It would be unfortunate if the interpleader legislation should be held to abolish non-statutory federal interpleader. I am not sure whether an original bill should lie against claimants all residing in the same state, notwithstanding the reasoning on this point in the *Turman Oil* case,<sup>15</sup> but ancillary bills have often been granted in such a situation and are very desirable.<sup>18</sup> The new statute was drawn in the belief that the ancillary jurisdiction would continue to exist. The draftsman purposely refrained from attempting to define this jurisdiction in statutory terms, because such a definition would be sure to be both complicated and mistaken. The limits of ancillary interpleader are left to be worked out by the courts with reference to new situations that may arise.

The Act of 1936, furthermore, expressly recognizes the possibility of federal interpleader bills that do not conform to the statutory requisites. Paragraph (e) allows a defendant at law to interplead defensively whenever an original or ancillary bill would lie under either the 1936 Act "or any other provision of the Judicial Code and the rules of court made pursuant thereto."<sup>19</sup> This paragraph clearly contemplates that the new statute is not exhaustive. Federal bills of interpleader, apart from this statute, still seem possible under the general diversity jurisdiction when \$3,000 is involved and service can be obtained within the district of suit. But such non-statutory bills will be needed only in a few cases, because most interpleader situations will fall within the terms of the Act of 1936.

#### INHERITANCE TAXES CLAIMED BY OFFICIALS OF TWO STATES<sup>20</sup>

When a rich man has dwelling places in two states, his legal advisers ought to take the necessary steps to fix his domicile in one state or the other beyond the peradventure of a doubt, but such questions are occasionally neglected. On the millionaire's death, officials in each state seek to collect a large inheritance tax. If the executor could only find

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18. See cases cited in Chafee, *The Federal Interpleader Act of 1936* (1936) 45 *YALE L. J.* 963, 990 n. 86.

19. See Chafee, *supra* note 18, at 989.

20. See (1935) *Report of Committee of National Tax Association on Double Domicile in Inheritance Taxation*, presented at 28th National Tax Conference by Farwell Knapp of Connecticut, Chairman. This report has a full discussion of the evils of the present situation and reviews various remedies other than interpleader.

it possible to obtain an impartial and speedy decision on the question of domicile, he would pay the tax to the proper state without any further contest or delay. But the ordinary procedure by which each state prosecutes its claim entirely separate from the claim of the other state subjects the executor to a serious danger of double taxation, and he naturally feels obliged to fight both taxes by every possible means and in every possible tribunal. The consequences are bad for all concerned. Two long litigations are likely to follow, in which the estate and also each state spends a large amount of money which is naturally wasted if one state eventually loses its case. Since a decision one way or the other in the litigation with the state *X* officials is not *res judicata* in the litigation with the officials of state *Y*, it is conceivable that the courts of each state might find that the decedent lived in the other state, and he would thus have the rare privilege of going to an untaxed grave. However, it is much more probable that the judges of both states will decide that the decedent was their fellow citizen, and consequently two state inheritance taxes will be paid for one death. Such seems likely to be the fate of the fortune amassed out of Campbell's Soups.<sup>21</sup>

Clearly, some method should be found by which this single issue can be settled in one litigation in which the officials of both states are able to present their respective claims. At least three such methods suggest themselves.<sup>22</sup> The first plan is to settle the controversy between the two states in the United States Supreme Court. This means that the executor must fight each state separately in its own courts, and after losing in the courts of last resort in both states he must obtain two

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21. The Pennsylvania courts decided that Mr. Dorrance lived in Pennsylvania and his executor paid the inheritance tax in that state. Afterwards the New Jersey courts decided that he lived in New Jersey. This blow was by no means softened by a later decision refusing to let the executor deduct the Pennsylvania tax payment in computing the net value of the estate taxable by New Jersey. The New Jersey courts reached the cruel but consistent conclusion that, since the decedent did not live in Pennsylvania, the payment of the Pennsylvania tax was an illegal transaction that must be wholly disregarded. Various attempts to obtain federal relief have thus far failed. *Dorrance's Est.*, 309 Pa. 151, 163 Atl. 303 (1932), cert. denied 287 U. S. 660 (1932); 288 U. S. 617 (1933); *Dorrance v. Pennsylvania*, 53 Sup. Ct. 122 (1932); *In re Dorrance's Est.*, 172 Atl. 900 (Pa. Sup. Ct. 1933); *New Jersey v. Pennsylvania*, 287 U. S. 580 (1933); *In re Dorrance*, 115 N. J. Eq. 268, 170 Atl. 601, 116 N. J. Eq. 204, 172 Atl. 503, (Prerog. Ct. 1934) [aff'd by memo. 13 N. J. Misc. 168, 176 Atl. 902 (Sup. Ct. 1935)]; *Hill v. Martin*, 296 U. S. 393 (1935), aff'g 12 F. Supp. 746 (D. N. J. 1935). This litigation is noted in (1934) 34 COL. L. REV. 1151, 1374, and in (1934) 57 N. J. L. J. 365, 391, and discussed by Harper, *Final Determination of Domicil in the United States* (1934) 19 PENN. BAR. QUART. 213 [reprinted in (1934) 9 IND. L. J. 586]. See *Campbell's Soups* (Nov. 1935) 12 FORTUNE 69, 136.

22. The report cited note 20 *supra* reviews other possible solutions, such as use of the Federal Declaratory Judgment Act, federal legislation specifically enlarging the jurisdiction of the United States courts to include cases of disputed domicile in tax matters, reciprocal state statutes, and interstate compacts.

writs of certiorari from the Supreme Court. Certiorari will perhaps be granted because a federal question is presented. Under *First National Bank v. Maine*<sup>23</sup> and similar cases the Fourteenth Amendment invalidates an inheritance tax elsewhere than at the domicile of the decedent. If the two state suits can be nicely timed so that both of them will reach the Supreme Court before either case is argued there, they can perhaps be heard together and decided as a single controversy. This plan has never been successfully put into operation.<sup>24</sup> It has disadvantages. First, it necessitates the expense and delay of two protracted state suits and two petitions for certiorari. Second, the testimony may vary greatly in the two state suits so that they will come to the Supreme Court on different records and consequently can not be decided as a single controversy. Third, the great pressure of other business in the court may cause certiorari to be denied, so that the two separate suits will never be drawn together in one tribunal.

A second plan was successfully used in an amusing New York case, *Matter of Trowbridge*.<sup>25</sup> When Mr. Trowbridge died, inheritance taxes were claimed by both New York and Connecticut. On the petition of the executor and with the consent of both states, the Surrogate's Court in New York allowed the State of Connecticut to intervene in the inheritance tax proceedings for the purpose of determining the residence of the decedent. Although the Surrogate's Court found that Mr. Trowbridge lived in New York, this decision was reversed by the Court of Appeals. Both states deserve great credit, Connecticut for its willingness to intervene and New York for the impartiality of its judges in deciding against their own state. But, although it is to be hoped that this unusual case will furnish an example for future disputes of the same sort, not every state will be so ready as Connecticut to submit its claim to a tribunal that may perhaps be unconsciously biased in favor of its own officials. Moreover, the technique of obtaining a decision from one state court will become particularly unsatisfactory if the two states have different laws as to domicile.<sup>26</sup>

The last method to be discussed, and the most effective, is interpleader. If interpleader is possible, it brings the single issue of domi-

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23. 284 U. S. 312 (1932).

24. A review of the Pennsylvania tax on the Dorrance Estate was refused by the Supreme Court because the federal question was not raised in the state court, note 21 *supra*. Even if the court ultimately consents to review the New Jersey tax, it will not have the opportunity to consider the interstate controversy as a unit or to hear the officials of both states. Moreover, New Jersey may succeed in establishing Mr. Dorrance's domicile therein, so that the Supreme Court will have to uphold the New Jersey tax without being able at the same time to order the Pennsylvania tax repaid, although in this event it must have been wrongfully collected.

25. 266 N. Y. 283, 194 N. E. 756 (1935).

26. As to such differences in law, see the report at p. 6-8 cited note 20 *supra*.

cile into one litigation in the courts of one jurisdiction. Instead of the executor's being obliged to deny liability for both taxes, as is necessary when there are two separate state suits, he can safely admit liability for one of the taxes claimed, deposit the money in court, and leave the officials of the two states free to litigate their claims expeditiously against one another. A state court will not usually be the proper place for such an interpleader proceeding, first, because of unconscious bias already mentioned, and secondly, because in neither state can a court serve process on the officials of the other state so as to bring them in. Only in cases of mutual trust among state officials, such as *Matter of Trowbridge*,<sup>25</sup> will the outside tax officials consent to come in and make state interpleader possible. On the other hand, the United States courts are impartial tribunals much better fitted to adjudicate an interstate controversy,<sup>27</sup> and the difficulty of jurisdiction over the officials is perhaps not insuperable.

Before 1936, federal interpleader would probably have been impossible in these inheritance tax disputes between states, because the United States courts had no personal jurisdiction outside the state in which they sat and no power to enjoin pending state proceedings. However, the Interpleader Act of 1936 may enable a United States district court in either state to grant interpleader against both sets of tax officials. The previous objections to federal jurisdiction mentioned above have now been removed. The district court with its nationwide powers of service of process can compel the tax officials in the other state to come in; and the statute permits federal injunctions against future or pending tax suits in the state courts of the two states concerned.<sup>28</sup> But there are other objections to such a federal interpleader suit that must now be considered.

First, does the absence of complete diversity of citizenship prevent relief? The fact that the decedent was by hypothesis a citizen of the same state as one set of tax officials (it is uncertain which set) is not material, because in federal suits by or against an executor the residence of the executor is decisive and not that of the decedent.<sup>29</sup> But if the executor is a resident of either state, he is a co-citizen of one set of tax officials. This fact does not constitute a serious obstacle. Co-citizenship between the stakeholder and one claimant has been held not

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27. If the two states have different laws as to domicile, a United States court may have to work out a federal doctrine. See notes 26 *supra* and 51 *infra*.

28. Section 266 of the Judicial Code, 36 Stat. 1162 (1911), 28 U. S. C. A. § 380 (1926), requiring a court of three judges to sit upon injunctions against the enforcement of a state statute or administrative order, does not seem applicable, because the Act of 1936, paragraph (b), gives the district court power to issue an order of injunction against each claimant "notwithstanding any provision of the Judicial Code to the contrary."

29. *Mecom v. Fitzsimmons Drilling Co., Inc.*, 284 U. S. 183 (1931).

to be a bar under the federal interpleader legislation,<sup>30</sup> even when the constitutional jurisdiction of the United States courts must be derived from their power to decide "Controversies . . . between Citizens of different States." There is still more reason for disregarding such partial co-citizenship in inheritance tax disputes, because they fall within another clause of the Constitution, which states: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution."<sup>31</sup> The presence of a federal question as to the validity of one of the taxes under the Fourteenth Amendment is sufficient to permit interpleader in the United States courts without any diversity of citizenship, whenever personal jurisdiction can be obtained over all the claimants.<sup>32</sup> For that purpose nationwide service of process is essential, and hence the executor must bring the case within the terms of the Act of 1936 by fulfilling the statutory requirement of diversity of citizenship between the claimants, but the citizenship of the executor himself has no importance under either the Interpleader Act or the Constitution.<sup>33</sup>

A second objection is created by the Eleventh Amendment to the United States Constitution. The tax official of one state (but of which state is uncertain) is admittedly acting within his constitutional and statutory powers. It may be argued, consequently, that proceedings against this official (whichever he is) are really against his state and thus outside the jurisdiction of a United States court. On the other hand, the official of one state is proceeding in violation of the Fourteenth Amendment, and interpleader is the best way to find out which state official it is. Thus, as to each claim, a genuine constitutional doubt exists. This seems sufficient to bring the case within the principle of *Ex parte Young*.<sup>34</sup> After all, the possibility that a defendant official's

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30. See Chafee, *The Federal Interpleader Act of 1936* (1936) 45 YALE L. J. 963, 974, n. 33.

31. U. S. CONST. Art III, § 2.

32. Several cases of federal bills of interpleader involving a federal question are collected in Chafee, *Interpleader in the United States Courts* (1932) 41 YALE L. J. 1134 at 1139-1140.

33. If the co-citizenship of the executor with one claimant is considered to be fatal, it can easily be avoided through the appointment of an executor who resides in some third state that is not involved in the controversy. The Supreme Court has said through Mr. Justice Roberts that the motive or purpose actuating a valid appointment of an executor is immaterial upon the question of identity or diversity of citizenship. *Mecom v. Fitzsimmons Drilling Co.*, 284 U. S. 183 (1931). The court held that, when the decedent and the other party to a controversy were residents of different states, a resident of the opponent's state could be appointed executor so as to defeat federal jurisdiction. It follows that, if the decedent and an opponent were co-citizens, an executor can be selected from a different state in order to confer federal jurisdiction.

34. 209 U. S. 123 (1908). The validity of the rate order, which the state attorney general was enjoined from enforcing, was eventually sustained in *Minnesota Rate Cases*,

action is valid is present in every federal equity suit against an official of a state or of the United States. The court does not know until the case is decided whether or not he was acting lawfully. In many cases jurisdiction was taken to enjoin official action that was ultimately held constitutional. For instance, in *Ex parte Young* itself the freight rate at issue was eventually sustained. Suits in equity against state and federal officials have become the customary process for settling grave constitutional questions created by administrative orders, and in recent years the Supreme Court has rarely let the supposed principle of sovereign immunity interfere with the smooth operation of this process.<sup>35</sup> Therefore, it is to be hoped that the Eleventh Amendment will not prevent federal interpleader to determine which of two state inheritance taxes is lawful. The need to decide the constitutional question in equity is much greater here than in the usual injunction suit against state officials, because federal interpleader is virtually the only practicable remedy. Neither state nor federal courts can offer any satisfactory alternative.

A United States court should not be deterred from taking jurisdiction of such an interpleader bill, merely because of reluctance to enjoin the state tax officials. Injunctions are not essential to the success of the interpleader. If the court is willing to compel the state officials to come in and litigate their claims inter se, it may not be necessary to enjoin the state tax proceedings. The officials will probably see the fairness of staying these proceedings voluntarily until the United States court has given a decision on the merits. Hence, interpleader without injunctions may often be sufficient.

If it should be decided that the Eleventh Amendment applies to such interpleader suits, a practical way out of the difficulty still remains. A state may consent to be sued in a United States court by a citizen of another state. The tax officials of both states can perhaps be induced by persuasive arguments to give their consent, in order to save their respective governments the heavy expense of protracted litigations in state courts. They may be glad to submit the question of domicile to a single impartial tribunal for the rapid determination that interpleader makes possible.

Third, even if federal jurisdiction can be obtained, some of the equitable principles governing interpleader suits may cause trouble. The

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231 U. S. 352, 440-467 (1913). As to the effect of *Ex parte Young* to deprive the Eleventh Amendment of much effect in constitutional equity suits against officials, see CORWIN, TWILIGHT OF THE SUPREME COURT (1934) 80-84; and references cited in CHAFFEE, CASES ON EQUITABLE REMEDIES (1936) 264, n. 5.

35. This is illustrated by two recent suits to enjoin federal officials, where the immunity of the United States from suit was not even discussed in the Supreme Court. *Arizona v. California*, 292 U. S. 341 (1934); *Ohio v. Helvering*, 292 U. S. 360 (1934).

case resembles an interpleader suit against the tax collectors of two towns in the same state, each of which claims to be the residence of a taxpayer. The authorities are divided as to the possibility of interpleader in this intrastate situation,<sup>36</sup> and there may be a similar judicial hesitation about interstate tax complications. One difficulty is that the amounts claimed for the two inheritance taxes will be different, but it should be sufficient for the executor to deposit the larger amount in court,<sup>37</sup> or give a bond for that amount under paragraph (a) (ii) of the Act of 1936. Such a deposit of the larger tax was held satisfactory in an interpleader suit against two town collectors.<sup>38</sup> Then it may be contended that the two states do not claim the same debt, duty or thing, since each state acts independently of the other in levying its inheritance tax. This artificial identity test has been abolished by the last clause of paragraph (a) of the Act of 1936, providing that interpleader will lie "although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another."<sup>39</sup> It should be enough that the two inheritance tax claims are mutually exclusive. If one is right, the other must be wrong. The decedent cannot have been domiciled in both states, and justice requires that he should pay only one tax. To obtain such justice is the basic purpose of interpleader. Finally, the federal courts should not follow the reasoning of some state courts, which refuse to interplead tax officials on the ground that this would hinder the prompt collection of taxes. There is no policy in favor of the prompt collection of an invalid tax, and many cases in the United States Supreme Court have sustained injunctions against unconstitutional state taxes when the remedy at law was inadequate.<sup>40</sup> In our case, one of the state inheritance taxes violates the Fourteenth Amendment. And, whatever the adequacy of legal remedies for ordinary inheritance tax disputes, there is no remedy at law in either state to decide the question of domicile satisfactorily.

In short, none of the equitable objections to interpleader against the rival tax collectors is sound. Therefore, a United States court should

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36. See Chafee, *Modernizing Interpleader* (1921) 30 YALE L. J. 814 at 824-827, also stating some objections to federal jurisdiction that now seem to me unsound. See also CHAFEE, *CASES ON EQUITABLE REMEDIES* (1936) 27-30.

37. Chafee, *supra* note 36 at 824; 4 POMEROY, *EQUITY JURISPRUDENCE* (4th ed. 1919) § 1323, n. 1; *Heinemann v. Hyman*, 50 F. (2d) 696 (C. C. A. 6th, 1931); *Hayward v. McDonald*, 192 Fed. 890 (C. C. A. 5th, 1912); *School District v. Weston*, 31 Mich. 85 (1875); *Grant Bituminous Paving Co. v. Stange*, 225 Mo. App. 401, 405, 37 S. W. (2d) 469 (1931).

38. *Thompson v. Ebbets*, 1 Hopkins Ch. 272 (N. Y. 1824).

39. See Chafee, *The Federal Interpleader Act of 1936* (1936) 45 YALE L. J. 981.

40. The most recent example is *Grosjean v. American Press Co., Inc.*, 56 Sup. Ct. 444 (1936).

give relief if the executor satisfies the diversity of citizenship clause and the Eleventh Amendment.<sup>41</sup>

#### FOREIGN GARNISHMENT

Garnishment is a multiple-party controversy like interpleader, and sometimes involves residents of two or more states so that a state court has difficulty in reaching a satisfactory determination of their rights. In some situations of this sort, a federal interpleader suit by the garnishee may offer the best way out of the tangle. An important example of such relief is *Sanders v. Armour Fertilizer Works*,<sup>42</sup> the first and thus far the only case in which the United States Supreme Court interpreted the federal interpleader legislation. For these reasons and because it may affect the application of the 1936 Act, the decision requires consideration.

Sanders, a resident of Texas, had given notes to an Illinois corporation, which were not paid. Among his available assets were fire insurance policies issued by two Connecticut companies on his homestead, which had burned, entitling him to about \$7,500 of insurance money. In 1927, the Illinois creditor began garnishment proceedings against the insurance companies in an Illinois state court, serving Sanders by publication, and obtained a preliminary judgment against Sanders, who had not appeared, holding that about \$7,500 was due from him to the Illinois creditor. The answers of the garnishees had admitted liability to Sanders, but gave notice of his claim that the proceeds of the policies on a homestead were exempt from garnishment under the law of Texas. They were not so exempt under the law of Illinois. Before any final judgment against the garnishees and before a trial under their answers in the Illinois court, the companies interpleaded the policyholder and the garnishing creditor in a United States District Court in Texas in 1928, paying the amount due under the policies into court. The creditor moved to dismiss the bill of interpleader, but this motion was denied in

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41. A bill of interpleader has recently been filed against Massachusetts and California tax officials in the United States District Court in Massachusetts. *Worcester County Trust Co. v. Long et als.*, Equity No. 4292, filed in March, 1936. The temporary injunction was issued on April 27 by Brewster, J., after the motion of the California officials to dismiss the bill for want of jurisdiction and to dissolve restraining orders had been denied.

42. 292 U. S. 190 (1934), aff'g 63 F. (2d) 902 (C. C. A. 5th, 1933); rehearing denied, 292 U. S. 612 (1934). A motion to dismiss the bill was overruled in *National Fire Insurance Co. v. Sanders*, 38 F. (2d) 212 (C. C. A. 5th, 1930), rev'g 33 F. (2d) 157 (E. D. Tex. 1929), discussed in Chafee, *Interpleader in the United States Courts* (1932) 41 *YALE L. J.* 1134 at 1169-71. For other comments on various stages of the case see (1933) 33 *COL. L. REV.* 1062; Comment (1934) 47 *HARV. L. REV.* 1180; (1931) 26 *ILL. L. REV.* 77; (1934) 28 *ILL. L. REV.* 821; (1935) 23 *ILL. B. J.* 165; (1931) 9 *TEX. L. REV.* 281. See also *Globe & Rutgers F. Ins. Co. v. Brown*, 52 F. (2d) 164 (D. La. 1931), noted in (1932) 10 *TEX. L. REV.* 508.



1930 by the Circuit Court of Appeals.<sup>43</sup> After interpleader had thus been granted, the case went into the second stage and the controversy between the two claimants was heard on the merits in the District Court. The Circuit Court of Appeals, reversing the District Court, decided in favor of the garnishing creditor, and this decision was affirmed by the Supreme Court, so that after seven years of litigation the insurance money went to the garnishing creditor. The decision of the majority was expressed by Mr. Justice McReynolds, who in 1916 had written the opinion in the *Dunlevy* case,<sup>44</sup> which led to the first interpleader statute. Mr. Justice Cardozo filed a dissenting opinion, and the Chief Justice, Mr. Justice Brandeis, and Mr. Justice Stone joined in this dissent.<sup>45</sup>

The main issue, on which the court divided, concerned the question whether the Illinois garnishment gave the creditor a paramount right, as against Sanders, to the insurance money in the federal court. The majority held that the Illinois statutes and decisions made the garnishment a lien on the debt due to Sanders from the insurance companies, and in effect impounded the fund in Illinois for the benefit of the garnishing creditor. Illinois could thus apply its own view of exemptions. Although there was no final judgment against the garnishees to bind them, the preliminary judgment against Sanders bound him and was entitled to full faith and credit in the second stage of the interpleader. Therefore, the money paid into the federal court must go according to this Illinois judgment, and never came under the dominion of the Texas law—especially of her exemption statutes.

On the other hand, the minority thought that garnishment in Illinois did not operate as a lien or in rem. It was merely in personam against the debtor of a debtor, or at most an inchoate incumbrance that disappeared when the insurance money was paid into the federal court, so that the fund then became free and clear. Therefore, the garnishment could have no extraterritorial validity until it ripened into payment, as in *Harris v. Balk*<sup>46</sup> and other cases holding that the right of the non-resident principal debtor against the garnishee is discharged when the garnishee pays the garnishing creditor.

Obviously, this main issue lies far away from the law of interpleader. The interpleader problems that arose in the first stage were virtually settled when the bill was allowed and the stakeholders were discharged. Even the title of the case was then changed. In its earlier phases the stakeholders appeared as plaintiffs and both claimants as defendants,

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43. *National Fire Insurance Co. v. Sanders*, 38 F. (2d) 212 (C. C. A. 5th, 1930).

44. *New York Life Insurance Co. v. Dunlevy*, 241 U. S. 519 (1916).

45. Hutcheson, J., dissented in the Circuit Court of Appeals, 63 F. (2d) 902 (C. C. A. 5th, 1933) at 907.

46. 198 U. S. 215 (1905).

but in the case as it went to the Supreme Court, only the two claimants are named as parties. Thereafter the controversy involved conflict of laws and doctrines of garnishment, just as the second stage of a life insurance company's interpleader suit usually turns on some question of life insurance law.

Although most of the *Sanders* case has little relation to the possibility of interpleader under the Act of 1936, some parts of the opinion of Mr. Justice McReynolds are important in connection with the new statute.

(1) Federal jurisdiction under the interpleader legislation is expressly upheld, and the statutory provision allowing process to run in any district is impliedly sustained. The Supreme Court recognizes the right of the insurance companies to obtain relief from double vexation through interpleader, although this is not the usual case of a dispute involving a beneficiary or an assignee.

(2) The decision shows that interpleader will lie under the Act of 1936 although one claimant is a garnishing creditor. This is very gratifying, because the *Dunlevy* case<sup>44</sup> proved the need of interpleader against a garnishing creditor and the interpleader legislation was originally designed to negative the effect of that case. Furthermore, it must not be hastily inferred from the *Sanders* case that the garnishing creditor will always win the second stage. The garnishment was held to be a lien in that case largely because of special features of the Illinois garnishment law which do not exist in some other states.

It is also important to observe that the situation in the *Sanders* case was entirely different from that in the *Dunlevy* case. In the *Sanders* case the claimants were the policyholder and *his* garnishing creditor. In the *Dunlevy* case the controversy was between the policyholder and a garnishing creditor of *an assignee*. Thus the *Dunlevy* case turned on the ownership of the policy at the time of the garnishment, whereas in the *Sanders* case the policyholder was indisputably the owner at that time. A garnishment may have some of the qualities of a proceeding in rem for the purpose of dealing with a chose in action that is admittedly owned by the principal debtor, and the result of the garnishment may be *res judicata* against him, although not personally served. But when the ownership of the garnished chose in action is claimed by a non-resident outsider, *X*, then the court cannot adjudicate the ownership so as to bind *X* unless there is personal jurisdiction over him.<sup>47</sup> In the *Sanders* case there was no claimant in the position of *X*.<sup>48</sup>

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47. Chafee, *Interstate Interpleader* (1924) 33 YALE L. J. 685, at 709; *Ward v. Boyce*, 152 N. Y. 191, 46 N. E. 180 (1897). See also *Ruff v. Ruff*, 85 Pa. 333 (1877); (1925) 23 MICH. L. REV. 543; (1930) 29 MICH. L. REV. 114; (1925) 9 MINN. L. REV. 570; (1930) 40 YALE L. J. 139; 2 SHINN, ATTACHMENT AND GARNISHMENT (1900) §§ 725, 727.

48. The wife of *Sanders* intervened in the District Court and asserted her rights under the Texas law exempting homesteads. But her claim was presumably identical with that

Suppose that a situation somewhat resembling the *Dunlevy* case should arise under the 1936 Act. *G*, a creditor of *P*, sues in Illinois to garnish a life insurance company, which has issued a policy to *P* that is now matured. The insurance money is claimed by *X*, a resident of Texas, who asserts that he is an assignee of the policy. The Illinois court gives a preliminary judgment against *P* like that in the *Sanders* case. The insurance company interpleads *X* and *G* in a federal court in Texas. In the second stage *X* proves a valid assignment to him before the garnishment. *X* would then prevail, and the *Sanders* case would have no application. The garnishment cannot operate as a lien upon an asset that does not belong to the principal debtor. In the *Sanders* case the asset did belong to the principal debtor, the policyholder, and was transferred by the Illinois court to his creditor; but in the supposed case the debtor's ownership was contested by the Texas assignee, and the Illinois court has no personal jurisdiction over him that can enable that court to adjudicate the validity of the assignment.

(3) The *Sanders* case shows that the substantive law governing the second stage of an interpleader suit is not necessarily the law of the state in which the federal interpleader suit is filed. On this point Mr. Justice McReynolds quoted the language of Sibley, J., in the Circuit Court of Appeals:<sup>49</sup>

"We do not think the filing of the federal interpleader and the payment thereunder of the money into the District Court in Texas operated to bring it under the dominion of Texas law. The applicant for interpleader often has a choice of forum, and he cannot at his will subject the rights of the contesting claimants to one set of laws rather than another. The purpose of the interpleader statute was to give the stakeholder protection, but in nowise to change the rights of the claimants by its operation. The interpleader is a suit in equity, and equitable principles and procedure are the same throughout the federal jurisdiction. The court is to weigh the right or title of each claimant under the law of the state in which it arose, and determine which according to equity is the better. The decision should be the same whether the interpleader is filed in Illinois or in Texas. No one's rights are intended to be altered by paying the fund into the court, which as an impartial neutral is to determine them."

This reasoning ought to apply equally well to the Act of 1936. That statute allows the stakeholder a considerable choice as to venue. He can select the district where any claimant resides. This freedom of choice is given to him merely for the purpose of protecting himself against double vexation. If, in addition, the stakeholder should be allowed to choose the substantive law that is to govern the rights of the claimants inter se, collusion might result. One claimant might say to

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of *Sanders*, and her intervention was dismissed from further consideration as immaterial, before the interpleader reached the second stage. 38 F. (2d) 212 (C. C. A. 5th, 1930) at 214.

49. 292 U. S. 190 (1934) at 200, quoting 63 F. (2d) 902 (C. C. A. 5th, 1933) at 906.

the stakeholder: "I'll pay you \$500 to file your federal interpleader bill in my district because my state has doctrines favorable to me."

A troublesome question still remains. What substantive law is to govern? Suppose that the two claimants reside respectively in state *X* and *Y*, which have different rules of law as to the issue in the second stage, and that a federal interpleader suit is filed in a district court in state *X*. According to the *Sanders* case, the law of *X* will not govern. The law of *Y* seems equally inapplicable unless there is a garnishment in *Y* of the same nature as in the *Sanders* case. What is the court to do if there is no garnishment at all, or still worse, if one claimant is a garnishing creditor in *X* and the other claimant is a garnishing creditor in *Y*?<sup>50</sup> In such a case of double garnishment, it will be very difficult to apply the local law of either state and the federal court will have to work out its own doctrines for the second stage, independently of the rules prevalent in the two states. Even in the absence of such a double garnishment situation, it has been held that a question of general law arising in the second stage is governed by the pertinent federal rule and not by the decisions of the courts of either state.<sup>51</sup> There is thus some possibility that the extension of federal interpleader will bring about the creation of new federal judicial doctrines of substantive law.<sup>52</sup>

(4) The Supreme Court in the *Sanders* case expresses its willingness to construe federal interpleader legislation liberally, in order to give relief from conflicting claims on the part of residents in different states. Mr. Justice McReynolds speaking for the majority—and on this point the minority of the court doubtless agreed with him—quoted the following language of Judge Foster in the Circuit Court of Appeals,<sup>53</sup> which, though spoken of the 1926 statute, is equally applicable to the Act of 1936:

"The statute is remedial and to be liberally construed. It is broad enough to cover any adverse claims against the proceeds of the policies, no matter on what grounds urged."

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50. As to the last possibility see (1935) 23 ILL. B. J. 165, 167.

51. *Kansas City Life Ins. Co. v. Adamson*, 24 F. (2d) 712 (N. D. Tex. 1928).

52. See note 27 *supra* as to the possible development of a federal law of domicile through interpleader of tax officials.

53. 292 U. S. 190 (1934) at 199, quoting from 38 F. (2d) 212 (C. C. A. 5th, 1930) at 214.